DOUBLE PUNISHMENT UNDER STATUTE AND ORDINANCE. — Where a municipal ordinance prohibits acts which are also penal offences under the state laws, questions of considerable difficulty arise. That such ordinances may constitutionally be passed is generally, though not universally admitted. COOLEY, CONST. LIM., 6th ed., 239; *cf.* 1 BEACH, PUB. CORP., § 510. Accepting their constitutionality, may the same act be twice punished, once under the ordinance, and again under the statute? Some states hold that it may not; and that the act is punishable alone by that power which first takes jurisdiction. *Lynch* v. *Commonwealth*, 35 S. W. Rep. 264 (Ky.); see *People* v. *Hanrahan*, 75 Mich. 611. A recent Missouri case, inconsistent with earlier decisions in the same court, gives a contrary answer. *State* v. *Muir*, 65 S. W. Rep. 285; *contra*, *State* v. *Cowan*, 29 Mo. 330. The defendant having been convicted and fined in the police court upon a complaint for violating a city ordinance against gambling, was indicted under a statute for the same act, and his plea of *autrefois convict* held no bar. The prosecution under the ordinance was considered a merely civil proceeding.

This result, though not this reasoning, is in accord with the weight of authority. COOLEY, *supra*; *Hankins* v. *People*, 106 Ill. 628; *State* v. *Clifford*, 45 La. Ann. 980. It is usually argued that the single act constitutes two offences, one purely local, against the police regulations of the municipality, the other a violation of the public law. *Mayor* v. *Allaire*, 14 Ala. 400. An analogy is often drawn to the concurrent jurisdictions of state and federal courts. See *State* v. *Ambrose*, 6 Ind. 351. This analogy however is unsound, for the municipality is not a distinct sovereign, its only power emanating solely from the state. A more satisfactory reason for allowing such double punishment is advanced when it is said that the constitutional prohibitions against double jeopardy were never intended to apply to conviction under a mere police regulation. *State* v. *Clifford*, *supra*. This view would seem to find support in those cases which permit conviction for a violation of the ordinance by summary proceedings, when if the act were punished as a violation of the statute indictment and jury trial would be requisite. *Ogden* v. *Madison*, 87 N. W. Rep. 568 (Wis.); *McInery* v. *Denver*, 17 Col. 302.

The principal case suggests a third ground on which to support these decisions, namely that the prosecution under the ordinance is not really a criminal proceeding. Such a view is not wholly without support. Where as at common law, the enforcement of the ordinance is by an action of debt for the fine brought in the name of the city, the action is admittedly civil. 1 DILL., MUN. CORP., § 410. But where, as is usual in this country, the proceeding is in the nature of a complaint, the character of the action is much disputed. The cases necessarily turn largely upon the particular wording of the state constitution and statutes. See 33 L. R. A. 33, note. In general it seems to be held that if the violation of the ordinance is also a misdemeanor by statute or common law, the proceeding is criminal; otherwise it is civil. See *State* v. *Municipal Court of Milwaukee*, 89 Wis. 358. This distinction appears invalid. The character of the violation of the police regulations of the city is not altered by the criminality or non-criminality of the act under the statutes. The true test it is thought rests in the intention of the legislature in authorizing, and of the city in passing such regulations. This is to be gathered from the nature of the act prohibited, the penalty imposed, and the method of procedure. If the purpose of the ordinance is to render reparation to

the city by a fine, the proceeding, even though by complaint, may well be considered civil rather than criminal. On the other hand, if the object is to penalize the offender, it would seem that the proceeding to collect the fine, unless it be an action of debt, and certainly the proceedings to impose a penalty of imprisonment, would be of a criminal character. The statement of the principal case, therefore, that such proceedings are merely civil would seem too broad; yet two convictions may be supported in such cases on the ground above suggested that the constitutional protection against double jeopardy was not intended to extend to punishment for violation of a city ordinance.

WHAT CONSTITUTES A CLOG ON THE EQUITY OF REDEMPTION? — The principle that an extortionate or oppressive contract is not necessarily enforceable because voluntarily made has been thought especially applicable to money-lending transactions. Accordingly, if the borrower gives security there is a rule that he may repudiate any part of his mortgage agreement that clogs the equity of redemption. Definitions of such an agreement, differing substantially, appear successively in English cases. The original test, whether the mortgagor promises something beside repayment of the loan with interest, was succeeded by one less sweeping, namely, whether the mortgagor's by-agreement makes redemption harder. *Biggs* v. *Hoddinott*, [1898] 2 Ch. 307. Then it was reasoned that if the mortgage given was a security as well for the performance of any additional agreement as for repayment of the loan, redemption was made no harder because that very agreement became part of the mortgage-obligation. *Santley* v. *Wilde*, [1899] 2 Ch. 474; see 13 HARV. L. REV. 595. It was problematical whether this decision left any case to which the rule against clogging redemption could apply; for by the admitted test there was no clog unless the burden of redeeming was increased, and by the decision itself agreements which most directly increased that burden were valid as becoming part of the mortgage transaction. Recently the question was neatly raised. A lessee of a public-house mortgaged his term, and purported to bind the land by a covenant to sell there none but the mortgagees' liquors. The incumbrance of the covenant was to exist during the whole term, even after the mortgage was satisfied. This particular stipulation the Court of Appeal held unenforceable, as being without the rule of *Santley* v. *Wilde*, *supra*, because not secured by the mortgage. *Rice* v. *Noakes & Co.*, [1900] 2 Ch. 445. The paradox is that if the mortgage had secured the covenant the bargain, though harder than that in the principal case, would have been sustained. The House of Lords, in affirming the decision, chose rather to disapprove *Santley* v. *Wilde*. *Noakes & Co., Ltd.*, v. *Rice*, [1902] A. C. 24.

The decision has more than the mere effect of weakening the rule in *Santley* v. *Wilde*. The covenant made redemption no harder, if by redemption is meant obtaining a reconveyance of the term. The judgment, however, interprets redemption in this connection as meaning a reacquisition by the mortgagor of the property in the condition in which he transferred it. The covenant is accordingly held invalid so far as it caused an incumbrance on the land outlasting the mortgage. The technical nature of this result appears in the technical distinctions which it necessitates. A covenant binding land not covered by the mortgage